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by an appraiser engaged directly by another financial services institution, if:

- (i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and
- (ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

§ 164.6 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A state certified appraiser or a state licensed appraiser may not be excluded from consideration for an assignment for a Federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with Federally related transactions must be state certified or licensed, as appropriate. However, a state certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 164.7 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, who violate this part may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

§ 164.8 Appraisal policies and practices of Federal savings associations and subsidiaries.

(a) *Introduction.* The soundness of a Federal savings association's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal re-

ports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of § 163.170 of this chapter.

(b) *Definition.* For purposes of this section, management means: the directors and officers of a Federal savings association, or service corporation of such savings association, as those terms are defined in §§ 161.18 and 161.35 of this chapter respectively.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which Federal savings associations may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall ensure that adequate appraisals are obtained and proper appraisal procedures are followed consistent with the requirements of this part 164.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the savings association consistent with the requirements of this part 164. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's state certification or licensing, professional education, and type of experience. An appraiser's membership in professional appraisal organizations may be considered consistent with the requirements of § 164.6

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the savings association's appraisal policies and procedures; and (ii)

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the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of § 164.4(b) through (d) shall not apply with respect to appraisals on nonresidential properties prepared on form reports approved by the OCC and completed in accordance with the applicable instructional booklet.

PART 165—PROMPT CORRECTIVE ACTION

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AUTHORITY: 12 U.S.C. 1831o, 5412(b)(2)(B).

SOURCE: 76 FR 49065, Aug. 9, 2011, unless otherwise noted.

§ 165.1 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* This part is issued by the OCC pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this part is to define, for Federal savings associations, the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part also establishes procedures for submission and review of capital restoration plans and for issuance and

review of directives and orders pursuant to section 38.

(c) *Scope.* This part implements the provisions of section 38 of the FDI Act as they apply to Federal savings associations. Certain of these provisions also apply to officers, directors and employees of Federal savings associations. Other provisions apply to any company that controls a Federal savings association and to the affiliates of a Federal savings association.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Disclosure of capital categories.* The assignment of a Federal savings association under this part within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the OCC or otherwise required by law, no Federal savings association may state in any advertisement or promotional material its capital category under this subpart or that the OCC or any other Federal banking agency has assigned the Federal savings association to a particular category.

§ 165.2 Definitions.

For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a)(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term “controlled” shall be construed consistently with the term “control.”